1993

Cecelia Bea Scafide v. James Wayne Scafide : Reply Brief

Utah Court of Appeals

Mary C. Corporon; Corporon and Williams; Attorney for Appellant.
Carolyn Driscoll; Attorney for Appellee.

IN THE UTAH COURT OF APPEALS

CECELIA BEA SCAFIDE.

Plaintiff/Appellee,

-vs-

JAMES WAYNE SCAFIDE,

Defendant/Appellant.

REPLY BRIEF OF APPELLANT

Lower Court Civil No. 914903785DA
Case No. 930276-CA

Priority Classification 15

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REPLY BRIEF OF APPELLANT

APPELLANT (hereinafter "defendant" or "husband") submits the following as his reply brief in support of his appeal in the above-referenced action:

DETERMINATIVE PROVISIONS, CASES, STATUTES and RULES

Rule 60(b)(7) of the Utah Rules of Civil Procedure, may be determinative of the outcome in this appeal.

STANDARD OF REVIEW

The parties to this action apparently agree that the standard of review is for an abuse of discretion on the part of the trial court. Birch v. Birch, 771 P.2d 1114 (Utah Ct. App. 1989; appellee's brief, at pp 1 and 2).

SUMMARY OF THE ARGUMENT

1. The trial court abused its discretion in failing to set aside the decree of divorce and judgment entered against the defendant/appellant. The trial court's failure to set aside the decree of divorce and judgment was an abuse of discretion for the following reasons:

a. the defendant had not been represented at any prior stage in the proceedings by independent counsel; and

b. there was substantial evidence on file at the time the decree of divorce was entered that the defendant was not competent to stipulate to a decree of divorce in his own behalf; and

c. there was substantial evidence before the trial court in support of the defendant's motion for relief from judgment to the effect that the plaintiff had perpetrated a fraud against the defendant by assuring him that the divorce was merely a sham, to protect the parties' assets from contingent liabilities created by a driving incident in which the defendant had been involved, and that the plaintiff continued to treat the defendant as her husband until over six months after the entry of the decree of divorce.

ARGUMENT

THE TRIAL COURT ABUSED ITS DISCRETION IN FAILING TO SET ASIDE THE JUDGMENT ENTERED AGAINST THE DEFENDANT.

The procedural facts in this case are not substantially in dispute. The parties signed a stipulation, the plaintiff being represented by counsel and the defendant acting pro se. The trial court waived the ninety-day waiting period and permitted a decree of divorce to be granted on December 3, 1991. The trial court waived the initial ninety-day waiting period to permit entry of the decree of divorce, based upon two letters from the defendant's health care providers. Subsequently, on July 30, 1992, the defendant filed a motion for relief from judgment pursuant to Rule 60(b)(7) of the Utah Rules of Civil Procedure.

POINT I. DEFENDANT SUFFERED FROM A MENTAL ILLNESS SUCH THAT A DEFAULT WAS IMPROPER.

In her brief, the plaintiff takes exception with the description that the defendant suffered from a mental illness or defect at the time of the entry of the decree of divorce. However, plaintiff's argument wholly ignores the fact that the defendant had been awarded Social Security disability benefits prior to the entry of the decree, and that the Social Security Administration had required that a conservator be appointed, not the plaintiff, to

administer the funds received from the Social Security Administration. It flies in the face of logic to assume that the Social Security Administration would award benefits, and then require that a representative payee receive the benefits in behalf of the defendant, if defendant were deemed capable of managing his own affairs.

Further, the health care providers for the defendant filed reports with the trial court, to support a waiver of the initial ninety-day waiting period, describing very alarming conduct on the part of the defendant. The letter from the medical doctor describes the defendant as "an admitted alcoholic who now drinks one pint of liquor per day according to his account. He has exhibited erratic and aggressive behavior in the recent past. He has damaged his hands from punching walls in the recent past in testimony to this behavior." The letter from Rick Hansen, a physician's assistant, also describes Mr. Scafide as drinking excessively, and refers Mr. Scafide for mental health counseling for treatment. All of these descriptions are of an individual who may very well not be competent to act in his own behalf, on the face of the documents. (These medical reports are included as part of the appendix hereto.)

The trial court abused its discretion in failing to set aside a decree of divorce entered in the face of this kind of evidence

about the defendant's health and mental state at the time of entry of the decree.

Plaintiff alleges in her brief that there were "no manifestations of alarm or concern . . . raised about the defendant's assertion to his health care providers that his divorce was uncontested." An uncontested divorce is a far cry from a divorce in which an individual is not represented by any legal counsel. Moreover, it is not the duty of health care providers to know or understand the law or the legal system, or to provide legal advice to their patients. It would be unusual, rather than the norm, for a health care provider to interject a legal opinion in a legal proceeding.

Plaintiff asserts that the defendant's representation of himself at a trial arising from a DUI arrest in Moab, Utah, subsequent to the decree of divorce, is evidence of his competency. What plaintiff has failed to relate to the Court is that the defendant's representation of himself in that criminal matter resulted in a finding of guilty and substantial penalties, and was probably very ill-advised.

POINT II. THERE IS SUBSTANTIAL EVIDENCE TO SUPPORT A FINDING THAT PLAINTIFF PERPETRATED A FRAUD UPON DEFENDANT AND THE COURT.

Plaintiff, both in the trial court and in her appellate brief,

strenuously denies that she engaged in any scheme to defraud defendant to persuade him to sign a stipulation for an uncontested divorce. She contended in the trial court and contends to this court that she and the defendant have led "separate lives" for a significant period of time, and that they did not continue to act as husband and wife after entry of the Decree of Divorce.

In support of her position, the plaintiff has submitted to the trial court an addendum containing her trial court affidavit in opposition to her motion for summary judgment. To this she has attached only the last page of the parties' lease with the landlord in Colorado, showing that the plaintiff signed the lease. She has failed to attach the front page of the lease because it would reflect that the lease was held in the names of both parties. The entire lease agreement, together with the "pet rider" signed by both parties, is attached to the defendant's affidavits in the trial court and is a part of the court record. It shows that plaintiff and defendant had housing together months after the decree.

Though she contends that the defendant and she did not live together as husband and wife, plaintiff, in her own brief, admits the following:

a. that the parties both moved to Colorado immediately after the decree of divorce. (Plaintiff's brief at page 6);

and

b. that the plaintiff's name appeared upon the lease agreement for residential property leased in the names of both parties after the entry of the decree of divorce. (Plaintiff's brief at page 7); and

c. that the defendant purchased real estate in Colorado after the entry of the decree of divorce herein, and then conveyed title from himself to both of these parties as joint tenants with full rights of survivorship (plaintiff's brief at page 6); and

d. that the defendant continued to be listed as plaintiff's husband and as an insured party on her medical insurance after the decree of divorce (though defendant claims she notified her employer that she was divorced). (Plaintiff's brief at page 6); and

e. that the parties had joint bank accounts which continued to be held in the names of both parties after the entry of the decree of divorce. (Plaintiff does not admit, apparently, that she continued to use both joint accounts. However, she wrote a check on the "defendant's" joint account months after the decree of divorce was entered.) A copy of this check was submitted to the trial court as an attachment to plaintiff's affidavits, and is a part of the addendum to

this brief.

It is totally illogical for the plaintiff to assert that the defendant is lying about the representations made to him regarding the divorce and the nature of the parties' relationship after the divorce, in the face of all the independent evidence about the plaintiff's actual conduct after the decree, in allowing defendant to interact with her substantially as a spouse would.

Plaintiff makes much of the fact that she has brought an action for a restraining order against the defendant in the state of Colorado. It should be noted that all of these Colorado restraining order actions were commenced after June 1993, when defendant was advised for the first time that the plaintiff actually intended to be divorced from him, and to separate from him. There was no indication of any altercation between these parties until the "true divorce" occurred, exactly as the defendant says it did, in the summer of 1993 and not in 1992.

POINT III. THE DEFENDANT'S MOTION IS NOT TIME BARRED.

It is true that most of the basies for relief from a judgment under Rule 60(b) require that motions be filed within ninety days of the date of entry of the decree. However, Rule 60(b) clearly authorizes a court to relieve a party from a judgment, in the interests of justice, beyond a three month waiting period. In the

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May 1, 1994

MAY 02 1994

UTAH COURT OF APPEALS
230 South 500 East, #400
Salt Lake City, Utah 84102

Re: Scafide v. Scafide, Lower Court Case No. 914903785DA
Appeals Court Case No. 930276CA

Greetings:

This letter is in regard to the appellant's reply brief in the above-referenced matter filed with the Utah Court of Appeals on April 29, 1994.

On page 8 of the reply brief, in the last line before Point II., the language should be: "in the summer of 1992 and not in 1991." On page 9, the last line of second paragraph, the date should read "July 1992," not July 1993.

Thank you.

Sincerely,

MARY C. CORPORON
Attorney at Law

MCC:keg

cc: Jim Scafide

instant case, the plaintiff is alleged to have perpetrated a fraud as follows: she concocted an explanation for wanting a divorce, other than a desire to terminate her relationship with the defendant; she obtained defendant's stipulation to a "sham" divorce; she knew defendant had a mental or emotional illness; she strung the defendant along for six months after the entry of the decree of divorce, acting as though she intended to continue with their relationship as husband and wife; and finally, she terminated the relationship by obtaining a restraining order in Colorado, and eventually married a third party (whom she had previously known in Utah) in Colorado in July 1993.

Defendant acknowledges that there is a need for finality of judgments. However, it is not in the interests of justice to permit someone to perpetrate a fraud upon an opposing party, to prevent them from filing a motion for relief from judgment or taking action to defend themselves for three months, and then to leave the aggrieved party without any legal remedy.

Plaintiff, in her brief, asserts that defendant's case is merely a situation of "sour grapes" and dissatisfaction with an earlier stipulation. In support of her case, plaintiff cites the decision in Richins v. Delbert Chipman & Sons Company, 817 P.2d 382 (Ut. App. 1991). In that case, Chipman argued that he had mistakenly entered into an ill-advised stipulation without fully

understanding its consequences. The court applied the three month time limit in which to bring an action under Rule 60(b). These facts are not consistent with and are highly distinguishable from the facts in the case now at bar. In the instant case, not only does the defendant claim that he entered into an ill-advised stipulation without fully understanding its consequences, but the defendant claims that he was mentally ill and/or impaired at the time of the stipulation. This is a fact not present in the Chipman case. Further, defendant contends here that the plaintiff affirmatively made an attempt to defraud defendant, to avoid his bringing an action to set aside the decree until after his time limits had long passed. Again, this is a factor not present in the Chipman case.

Plaintiff takes exception with the defendant's assertion that Utah law specifically recognizes that a party's fraud upon the court in obtaining judgment may constitute a unique set of circumstances under which the court may need to consider the party's conduct outside the time limits of Rule 60(b). Plaintiff takes exception to this, but wholly ignores the language of Rule 60(b) contained in the last section of that paragraph, which reads as follows:

> . . . This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for

fraud upon the court. . . .

This section of Rule 60(b) must be given independent interpretation and meaning by the Court. It simply cannot be identical to the provisions of Rule 60(b)(1) through Rule 60(b)(7), or there would be no point in including this sentence as a separate portion of the Rule. When Rule 60(b) states that the Rule "does not limit" the power of a court, it must mean that the time limits set forth in the preceding portion of the paragraph are not necessarily applicable in the case of fraud. That should be the interpretation of this Court, and the application of the Rule to the facts of this particular case.

The Utah Supreme Court has held, in a case substantially similar to the facts of the instant case, that it was an abuse of discretion for a trial court to fail to set aside a decree of divorce. In Boyce v. Boyce, 609 P.2d 928 (Ut. 1980), the Utah Supreme Court considered a fact situation wherein a decree of divorce was entered pursuant to a stipulation and a motion for relief from judgment was subsequently filed. In her motion for relief from judgment, the plaintiff in the Boyce action averred that she had stipulated to a decree of divorce, on the basis of information supplied to her by her former husband, that her husband had been guilty of fraud, misrepresentation and misconduct in relation to the divorce action, and that she was entitled to relief

from judgment. The trial court there denied the motion to set aside the decree of divorce. The Utah Supreme Court reversed on appeal, finding that the trial court had abused its discretion in refusing to grant the wife's motion. The court found as follows:

> A liberal standard for application of Rule 60(b) in divorce cases is justified by the doctrine of the continuing jurisdiction that a court has over its decrees. Clearly, a court should modify a prior decree when the interests of equity and fair dealing with the court and the opposing party so require. Although the trial court displayed great patience in dealing with this case, we cannot avoid the conclusion, on the basis of the contentions before this Court, that an injustice may have been perpetrated by defendant's actions. . . .

The Supreme Court reversed the trial court's denial of plaintiff's Rule 60(b) motion and remanded for reconsideration of the issues of property settlement, alimony and child support.

The Boyce decision is the case from this jurisdiction most like the facts presently before this Court. This Court is compelled by the decision of the Utah Supreme Court in Boyce, and by the requirements of justice and equity, to set aside the judgment and decree entered against defendant.

REQUEST FOR ATTORNEY'S FEES

Defendant/appellant respectfully requests this Court to order the plaintiff to pay the costs and actual attorney's fees incurred herein. The plaintiff has attempted to take advantage of defendant's mental state, and to defraud him. Defendant has been required to expend a considerable amount of time, energy and effort to defend himself in this action, and plaintiff should be ordered to pay defendant's expenses.

CONCLUSION

The trial court abused its discretion in refusing to grant defendant relief from the decree of divorce pursuant to Rule 60(b) of the Utah Rules of Civil Procedure. The lower court abused its discretion in the face of defendant's pro se status, his alcoholism and mental condition which were of record before the court, and the allegations of fraud set out in his affidavits in support of his motion for relief from judgment.

The defendant respectfully urges this Court to apply the decision in Boyce, supra, and to remand this matter for trial upon issues of property distribution, debt distribution, alimony and child support in the trial court. Further, defendant requests an award of attorney's fees for this appeal.

RESPECTFULLY SUBMITTED this _____ day of April, 1994.

CORPORON & WILLIAMS

_____

MARY C. CORPORON
Attorney for Defendant/Appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I am employed in the offices of Corporon & Williams, attorneys for the defendant herein, and that I caused the foregoing REPLY BRIEF to be served upon plaintiff by mailing two true and correct copy of the same in an envelope, postage pre-paid, and addressed to:

CAROLYN DRISCOLL
Attorney for Plaintiff/Appellee
8 East Broadway, #735
Salt Lake City, Utah 84111

on the _____ day of _____, 1994.

_____

APPENDIX

JAMES W. OR CECELIA B. SCAFIDE 9-84 V
9703 S JORDAN RIDGE RD 254-7710
SOUTH JORDAN, UTAH 84065

1011

Feb. 6 19 92 97-154/1240

PAY TO THE ORDER OF Standard Federal Savings $ 1793.50

One Thousand Seven Hundred Ninety-Three Dollars and fifty Cents DOLLARS

VALLEY BANK & TRUST COMPANY
WEST JORDAN OFFICE
9020 SOUTH REDWOOD RD • WEST JORDAN UTAH 84084

MEMO House PAYMENT Loan # 684-6107800 1000 extra prin. pay

Cecili B Scafide

⑆124001545⑆ 124397⑈ 1011 ⑈000179350⑈

001605474

JAMES W. OR CECELIA B. SCAFIDE 9-84 V
9703 S JORDAN RIDGE RD 254-7710
SOUTH JORDAN, UTAH 84065

990

1-11 19 92 97-154/1240

PAY TO THE ORDER OF Standard Federal Savings $ 5793.50

Five Thousand Seven Hundred Ninety Three 50/100 DOLLARS

VALLEY BANK & TRUST COMPANY
WEST JORDAN OFFICE
9020 SOUTH REDWOOD RD. • WEST JORDAN UTAH 84084

MEMO House payment

James W Scafide

⑆124001545⑆ 124397⑈ 0990 ⑈000579350⑈

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SALT LAKE CITY UTAH 84119

(801) 973-9999

GREENWOOD CENTER
7495 SOUTH STATE STREET
MIDVALE UTAH 84047

(801) 561-2231

WEST VALLEY CENTER
3730 WEST 4700 SOUTH
WEST VALLEY CITY UTAH 84118

(801) 964-2000

HOLLADAY CENTER
4675 SOUTH HIGHLAND DRIVE
HOLLADAY UTAH 84117

(801) 278-5151

VALLEY EAST CENTER
2121 NOWELL CIRCLE
SALT LAKE CITY UTAH 84115

(801) 486-2471

DAVIS CENTER
2132 NORTH 1700 WEST
LAYTON UTAH 84041

(801) 776-6444

HARRISON PLACE CENTER
3291 HARRISON BLVD.
OGDEN, UTAH 84403

(801) 627-1394

VILLAGE GREEN CENTER
1675 NORTH 200 WEST
PROVO, UTAH 84604

(801) 375-4900

COTTONTREE DENTAL
2230 N UNIVERSITY PARKWAY
PROVO UTAH 84604

(801) 374-2100

October 2, 1991

James Scafide
FHP# 31-22-42-1

To Whom It May Concern:

James Scafide was in 9-9-91 for a complete history and physical with me. During this time he did relate to me a history of alcohol abuse. He stated that he drinks 3 to 4 pints of liquor per week in order to obliterate the pain he suffers from a work injury, sustained March of 1987. Mr. Scafide states he has been drinking this way for 3 to 4 years now. I have suggested to Mr. Scafide mental health counseling for treatment.

Mr. Scafide has signed a consent for release of this information to his wife and her attorney for the purpose of expediting their divorce.

Sincerely,

Rick Hanson, PA-C
RH/br

000082

10/16/91

To Whom It Concerns:

James Scofield is an uncontrolled alcoholic who now drinks one pint per day of liquor according to his account. He has exhibited erratic and aggressive behavior in the recent past. He has damaged his hands from punching walls in the recent past as testimony to this behavior.

He claims that his divorce is uncontested and wishes to expeditite his divorce as soon as possible. I feel that the stress his wife is in due to his behavior would be best served by finalizing the divorce as soon as possible. If I can be of any help I can be contacted at 973-9999. He has been offered counseling for his problems.

K. McGrory M.D.

FHP

1300.10